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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,851	03/08/2004	Robert C. Angell	12406/5402	2446
26646	7590	09/14/2007		
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER SAGER, MARK ALAN	
			ART UNIT 3714	PAPER NUMBER
			NOTIFICATION DATE 09/14/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@kenyon.com

<p align="center">Office Action Summary</p>	<p>Application No.</p> <p>10/796,851</p>	<p>Applicant(s)</p> <p>ANGELL ET AL.</p>	
	<p>Examiner</p> <p>M. A. Sager</p>	<p>Art Unit</p> <p>3714</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Priority

1. The later-filed application must be an application for a patent for an invention that is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed grandparent application, Application No. 08844764, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. Grand-parent application no. 08844764, now U.S. Patent No. 5938200, fails to provide adequate support or enablement for any pending claim; thus, priority of instant application is as of the filing date of parent 09342150, now U.S. Patent No. 6702672, which was filed June 29, 1999. It is noted that Patentee filed a certificate of correction in parent application 09342150 that altered continuation data from 08844794 to 08844764 and any change of continuation data must be provided within parent file. Applicant is reminded of timing of claiming priority. 37 CFR 1.78.

Claim Objections

2. Claims 40 and 42 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The 'identification code is uniquely associated with gaming device does not further limit identification code identifying gaming device.

Claim Rejections - 35 USC § 102

3. Claims 1, 3-6, 8-12, 15, 17-18, 20-21, 23-24, 26-27, 38-41 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker (WO 96/00950). This holding is maintained from prior action for cited claims, as amended, and is reiterated below with consideration of amended language. Response to applicants' argument is provided below and incorporated herein. As best understood with broadest reasonable interpretation of claims, Walker discloses a remote gaming system and method teaching claimed steps/features (abstract, 3:2-13:32, figs. 1-15D) including a wireless hand held gaming device (ref 14, 82, PDA, laptop), comprising an id code identifying the wireless gaming device and uniquely associated with player or gaming device (ref 32, 34), entry apparatus (ref 20, 86) for entering wagering information such as a request or command and data to form a bet comprising a string of characters (22:9-27, 25:37-26:34, 29:18-41:23, FIGS, 1-15D), a transmitter transmitting a signal by radio frequency (PDA or laptop inherently transmit/receive by radio) the player's wager information and the identification code in an encrypted form (16:21-18:17, 23:11-22, 24:15-26, 25:3-26:10, 33:9-33:32, 34:24-35:9), wager amount register and account balance register (sic, Fig 1A-1B shows wager and total amount available displayed on screen and thus, memory such as register is inherent for storing wager amount and amount available, account balance), a card reader/writer including smart card (4:29, ref 91), an encryption key and a decryption key (supra), a database (sic, ref 16), including storing in a chip or ROM an identifier corresponding to the identification code (18:18-25, 24:15-26, 38:9-26, ref. 32, 34) further comprising steps providing the wireless gaming device (15:24-28, 16:4-19:16, 29:18-25, 37:19-24) comprising an entry apparatus (ref 86) for entering wagering information (supra), a transmitter (sic), an identification code stored on the wireless gaming

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device for identifying the wireless gaming device (18:18-25, 24:15-26, 25:3-26:34, 38:9-26, ref. 32, 34), entering the wagering information into the entry apparatus (25:3-26:34, 30:15-31:4), transmitting the identification code and the wagering information in an encrypted form (sic), receiving and decrypting the transmitted identification code and wagering information (33:6-36), a display for displaying the wagering information (fig. 1A-1B, ref 18, 84), receiving monetary tender (26:35-29:28, 35:5-9), establishing an account having account balance (29:18-28, 34:24-35:9), associating a wireless device having a stored identification code stored on the wireless gaming device (18:18-25, 24:15-26, 38:9-26), providing the player the wireless device (sic), receiving the identification code and wagering information (32:18-33:36), registering the players wager in the database based on the wagering information and the identification code (24:15-26:34, 29:35-31:4, 34:24-36:8, fig 1-15D, esp. 4, 7C, 9), debiting the account balance (30:15-31:23, fig. 7A), determining if the player wager wins a prize, and crediting account balance (30:15-31:23, fig. 7A), receiving the wireless device from player and tendering money to player based on the account balance (36:9-37:29, 40:13-41:23).

Claim Rejections - 35 USC § 103

4. Claim 7 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Walker. This holding is maintained from prior action for cited claims, as amended, and is reiterated below with consideration of amended language. Response to applicants' argument is provided below and incorporated herein. Regarding claim 7, Walker (22:9-27, 24:15-26:34, 29:35-31:4, 34:24-36:8, fig 1-15D, esp. 4, 7C, 9) and Lupton (abstract, 6:3-9:26, fig. 1-5, 7-8) each discloses claimed invention (supra) but does not clearly discuss string of characters such as selected wager elements being hexadecimal digits.

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An inventor does not need to discuss in their specification that which is old or conventional and preferably omits from their disclosure that which is conventional. Such is the case with Walker in that Walker does not disclose hexadecimal digits since it is conventional at least due to program language read by wireless device compiler, i.e. processor, translates inputs and program to assembler language which is in hexadecimal digits that is further translated to binary code of machine language. Also, wagering information entry such as 1000 is a 4-digit hexadecimal character string in Walker. Alternatively, the form of characters being hexadecimal (0-9 and A-F), or base sixteen, fails to patentably distinguish over Walker since Walker at least since it is notoriously well known for computer compilers/processor to translate program language to assembler language which uses hexadecimal digits prior to translating to binary or machine code. This is hornbook engineering or basic computer programming. Regarding claim 19, Walker (16:21-35, 38:18-25, ref 23) discloses claimed system including a memory storing identification code (sic) including ROM chip. An inventor does not need to discuss in their specification that which is old or conventional and preferably omits from their disclosure that which is conventional. Such is the case with Walker in that Walker does not state ROM chip or memory is EPROM; however, such chips were conventional. As evidence only, Bergeron (4764666) or Sarbin (5179517) each discloses a memory storing an identification code where the memory is EPROM for ease of reprogramming data stored in ROM. Walker also uses smart card (sic). Alternatively, it would have been obvious to an artisan at a time prior to the invention to add EPROM to Walker to permit ease of reprogramming data stored in ROM.

5. Claims 13, 16 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Franchi (5770533). This holding is maintained from prior action for cited

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claims, as amended, and is reiterated below with consideration of amended language. Response to applicants' argument is provided below and incorporated herein. Walker discloses claimed features of invention (sic) including a display and wireless communication except LCD (claim 13) and infrared signals (claim 16, 25). Franchi (15:26-16:22) discloses a wireless handheld gaming device comprising an LCD screen and infrared signals. However, an LCD for displaying and infrared signals for communicating is each notoriously well known in gaming. Infrared signals permit wireless remote direct communication; while, LCD permits easy to read display. Franchi is analogous art at least due to either being in the field of applicant's endeavor or, is reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). Therefore, it would have been obvious to an artisan at a time prior to the invention to add LCD and infrared signals as notoriously well known or as taught by Franchi to Walker to provide an easy to read display and to provide wireless remote direct communication.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker each in view of Pease (5326014). This holding is maintained from prior action for cited claims, as amended, and is reiterated below with consideration of amended language. Response to applicants' argument is provided below and incorporated herein. Walker discloses claimed features but lacks disclosing bicolour light emitting diode. Use of LED as an indicator is well known in gaming. Pease disclose use of tricolor LED as an indicator (9:55-10:55). It is known in gaming to provide indication of either game state or device operability state. Thus, it would have been obvious to an artisan at a time prior to the invention to add bicolour LED as taught by

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Pease to Walker to provide an indicator of operability or game state so as to alert user. Also, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). In this instance, the prior art of Walker in view of Pease teaches use of bicolor LED (i.e. structure) to provide an indicator to user of either game state or operability state of device. Further, a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim 1 recited that the apparatus was "for mixing flowing developer material" and the body of the claim recited "means for mixing ..., said mixing means being stationary and completely submerged in the developer material". The claim was rejected over a reference that taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.).

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Although, Pease provides use of LED to indicate another facet of game play, this does not teach away from claimed invention. It is known in gaming to provide indication of either game state or device operability state. The claimed 'to indicate separately that the wagering information has been entered and wagering information has been transmitted' is a functional recitation pertaining to operational status indicator of device. The standard of patentability remains as what the prior art taken as a whole would have suggested to an artisan at a time prior to the invention. In this instance, Walker in view of Pease taken at a time prior to the invention suggests to an artisan a wireless gaming device including a bicolor LED to provide an indication of either game state or operability status to user.

7. Claims 2, 22, 28-34 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Woodfield (EP 0649102). This holding is maintained from prior action for cited claims, as amended, and is reiterated below with consideration of amended language. Response to applicants' argument is provided below and incorporated herein. Walker discloses claimed system, method and device (supra) including encryption and decryption of transmitted signals except periodically polls the wireless gaming device to determine whether the player has entered wagering information to be transmitted to the receiver (claim 2), periodically polling the wireless gaming device to determine whether the player has entered wagering information (claim 22), the transmitter transmitting the signal when the receiver polls the wireless gaming device to determine that the wagering information has entered (claim 28) and the wireless gaming device is periodically polled by the receiver (claim 29). Woodfield discloses system, device and method for transmitting wagering information while commanding placing of bets (4:4-15:24, figs. 1-4) comprising a wireless gaming device that includes an identification code (7:15-16), entry

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apparatus (6:6-18, refs. 15-16), and transmitter (18, 9), a receiver (4, 7, 8, 27) for receiving identification code and wagering information (15:16-24), the receiver polling the wireless gaming device (7:30-8:5, 15:16-24) to determine whether the player has entered wagering data to be transmitted. Woodfield teaches claimed polling by a receiver (7:15-8:5, 15:16-24) so as to conserve power (7:30-43) to include periodically polls the wireless gaming device to determine whether the player has entered wagering information to be transmitted to the receiver (7:15-8:5, 15:16-24) periodically polling the wireless gaming device to determine whether the player has entered wagering information (sic), the transmitter transmitting the signal when the receiver polls the wireless gaming device to determine that the wagering information has entered (sic) and the wireless gaming device is periodically polled by the receiver (supra) such that a receiver periodically polls the wireless gaming device to determine if new data has been entered where data is environment of use such as wagering and Woodfield clearly states use of wireless device to place bets on sporting events, i.e. wagering. Thus, it would have been obvious to an artisan at a time prior to the invention to add periodically polls the wireless gaming device to determine whether the player has entered wagering information to be transmitted to the receiver, periodically polling the wireless gaming device to determine whether the player has entered wagering information, the transmitter transmitting the signal when the receiver polls the wireless gaming device to determine that the wagering information has entered and the wireless gaming device is periodically polled by the receiver as taught by Woodfield to Walker to conserve power. Also, a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte

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Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim 1 recited that the apparatus was “for mixing flowing developer material” and the body of the claim recited “means for mixing ..., said mixing means being stationary and completely submerged in the developer material”. The claim was rejected over a reference that taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.). Further, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board’s finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device is, not what a device does.” Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). The standard of patentability is what the prior art taken as a whole suggests to an artisan at a time prior to the invention. In this case, when Walker in view of Woodfield is taken as a whole at a time prior to the invention, the combination suggests to an artisan a wireless gaming system, method or device comprising a wireless gaming device that includes periodically polls the wireless gaming device to determine whether the player has entered wagering information to be transmitted to the receiver, periodically polling the wireless

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gaming device to determine whether the player has entered wagering information, the transmitter transmitting the signal when the receiver polls the wireless gaming device to determine that the wagering information has entered and the wireless gaming device is periodically polled by the receiver so as to conserve power.

8. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Woodfield as applied to claim 28 above, and further in view of Franchi. This holding is maintained from prior action for cited claims, as amended, and is reiterated below with consideration of amended language. Response to applicants' argument is provided below and incorporated herein. Walker in view of Woodfield discloses/suggests claimed wireless device (supra) except infrared signals. Franchi (15:26-16:22) discloses a wireless handheld gaming device comprising infrared signals. However, infrared signals for communicating are notoriously well-known in gaming. Infrared signals permit wireless remote direct communication. Franchi is analogous art at least due to either being in the field of applicant's endeavor or, is reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). Therefore, it would have been obvious to an artisan at a time prior to the invention to add LCD and infrared signals as notoriously well known or as taught by Franchi to Walker each in view of Woodfield to provide wireless remote direct communication.

9. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Jacobson (5785592). This holding is maintained from prior action for cited claims, as amended, and is reiterated below with consideration of amended language. Response to

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applicants' argument is provided below and incorporated herein. Walker discloses/suggests claimed wireless device (supra) except a security tag, sensing apparatus as claimed. Jacobsen discloses a wireless handheld game device that is used for placing wagers teaching a security tag affixed to or included as part of wireless terminal and a sensing apparatus which activates an alarm when the security tag is passed through the sensing apparatus for increased security to ensure terminal/device does not leave gaming hall. Jacobsen is analogous prior art since Jacobsen is either in the field of applicant's endeavor of wireless wagering handheld device (fig 1-4, ref 20, 96 and description thereof) or, at least is reasonably pertinent to the particular problem with which the applicant was concerned of improved security by adding electronic tag to device/terminal to alert security if wireless wagering device passes through portal (fig. 4), so as to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). Therefore, it would have been obvious to an artisan at a time prior to the invention to add a security tag affixed to or included as part of wireless terminal and a sensing apparatus which activates an alarm when the security tag is passed through the sensing apparatus as taught by Jacobsen to Walker for increased security to alert security whenever terminal/device is in process of leaving gaming hall.

10. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Woodfield as applied to claim 28 above, and further in view of Jacobson (5785592). This holding is maintained from prior action for cited claims, as amended, and is reiterated below with consideration of amended language. Response to applicants' argument is provided below and incorporated herein. Walker in view of Woodfield discloses/suggests claimed wireless device (supra) except a security tag, sensing apparatus as claimed. Jacobsen discloses a wireless

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handheld game device that is used for placing wagers teaching a security tag affixed to or included as part of wireless terminal and a sensing apparatus which activates an alarm when the security tag is passed through the sensing apparatus for increased security to ensure terminal/device does not leave gaming hall. Jacobsen is analogous prior art since Jacobsen is either in the field of applicant's endeavor of wireless wagering handheld device (fig 1-4, ref 20, 96 and description thereof) or, at least is reasonably pertinent to the particular problem with which the applicant was concerned of improved security by adding electronic tag to device/terminal to alert security if wireless wagering device passes through portal (fig. 4), so as to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). Therefore, it would have been obvious to an artisan at a time prior to the invention to add a security tag affixed to or included as part of wireless terminal and a sensing apparatus which activates an alarm when the security tag is passed through the sensing apparatus as taught by Jacobsen to Walker in view of Woodfield for increased security to alert security whenever terminal/device is in process of leaving gaming hall.

Response to Arguments

11. Applicant's arguments filed 6/25/07 have been fully considered but they are not persuasive. In reply to Applicants' assertion that Walker lacks an identification code identifying the wireless gaming device or a signal including wager and identification code in an encrypted form (and similar language), the examiner disagrees. First, all computing devices implicitly contain an identification code for identification/tracking purposes and thus Applicants' argument is not well taken. Second, Walker software code (ref 34) is stored in memory of wireless gaming device where the software resides on a tamper resistant or tamper-evident chip associated with

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the gaming computer (18:18-23) and thus implicitly identifies the gaming device [further note claims 40 and 42 specifically require associated with the gaming device]. Third, regarding the claimed device, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). In this case, claimed invention including identification code stored on the wireless gaming device and identifying the wireless gaming device (32, 34) and transmitting a signal including the identification code and the wagering information in an encrypted form (5:25-30, 10:28-32, 11:25-12:1, 165:4-7 and 21-29, 19:1-26, 24:15-26, 25:3-5, 26:5-34, 32:5-41:13) is taught by Walker (sic). It is noted that the claimed transmitting of the signal includes and does not preclude separate transmittance of code and wagering information. Fourth, although not deemed required by present claims at least since no assigning of id code to wireless device is required/claimed, as further evidence of identification code 'assigned' to identify a wireless gaming device, Woodfield (7:15-8:22, 15:16-24) or Schneier (5871398, 7:2-8:67, 9:50-10:32, 11:1-22, 11:57-14:50, ref 37, 38 116, I) each disclose wireless gaming device for placing wagers where the device stores an identification code identifying the wireless gaming

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device and transmits [in an encrypted form at least by Schneier] wagering information and an identification code that identifies the wireless gaming device. Thus, the office maintains that the claimed invention is not patentable over art of record. Finally, regarding providing device and code is 'associated with player', Walker's wireless gaming device [that is provided to a player] having software program and its assigned software identity code (16:21-29, 17:32-19:23:11-22, 26:18-32) is associated with a registered player is by analogy similar to a person with a registered library account checking out so as to be provided a book having library assigned catalogue code that is stored in library database so as to associate the identified catalogue code of particular book to a registered library account of person checking out the book in that the software code is associated with wireless gaming device at least due to wireless gaming device being inept or unable to communicate/function as disclosed without software program the code identifies and thus the code identifies device as by being associated therewith, and the assigned software identity code (ref 34) is associated with player account (ref 32) of player who is provided the wireless gaming device so as to know which player has which device/software which is verified during communication with CMC (sic).

Conclusion

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is

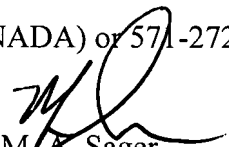
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not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. A. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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